

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Presubscribed Interexchange Carrier Charges)	CC Docket No. 02-53
)	CCB/CPD No. 01-12
)	RM-10131
)	

WORLDCOM'S COMMENTS

WorldCom ("WorldCom") hereby submits its comments, pursuant to the Federal Communications Commission's ("Commission") Notice of Proposes Rulemaking ("*Notice*"), released on May 20, 2002 in the above referenced proceeding.

INTRODUCTION

WorldCom applauds the Commission in its decision to conduct a rulemaking proceeding to examine its policies governing the incumbent local exchange carriers' (ILECs) federally-tariffed charges imposed on end-user subscribers for changing their presubscribed interexchange carrier (PIC). Despite more than a decade and a half of advancements in technology, the majority of ILECs are still charging consumers \$5.00 to change their PIC. This amount was introduced in 1984 as part of ILECs' initial post-divestiture access tariff filings, at a time when the processes for choice in carriers was less automated. This same fee continues to be assessed by the majority of the ILECs

despite the overwhelming evidence that it grossly exceeds the costs associated with this function simply because five dollars was deemed a “safe harbor”.¹

The Commission, in this rulemaking proceeding, should: (i) eliminate this \$5.00 safe harbor; (ii) determine an amount that more accurately reflects the cost of performing PIC changes using the most technologically efficient means; and (iii) mandate that the ILEC PIC change charge can be no more than this cost-based amount. The Commission cannot rely on market forces to ensure that ILECs will assess a reasonable PIC change rate because an end-user has no alternative choice for this service. Moreover, with only a few exceptions, the amount charged by ILECs has not been reduced in response to cost savings associated with the more automated processes. Therefore, Commission must end this gouging of consumers by implementing a policy that ensures a reasonable rate for PIC change charges.²

I. ILEC PIC CHANGE CHARGES MUST BE A REGULATED CHARGE.

In its *Notice* the Commission asks whether the ILEC PIC-change charge should be a regulated charge, or whether it can rely on market forces to constrain PIC-change charges to a reasonable level.³ Clearly the charge must be a regulated charge. ILECs control over 90% of the local market.⁴ Additionally, as the Commission explained in its *Notice*, “[u]nder current network configurations, a PIC change must be completed by an

¹ See *In the Matter of MCI Telecommunications Corporation v. US West Communications, Inc., et al.*, Memorandum Opinion and Order, FCC 00-178 (2000).

² This charge is assessed on end-users. Even if, as was a common practice in the long distance industry, the newly chosen carrier partially or fully reimburses the customer for the charge he or she is assessed by the local carrier, consumers still ultimately pay the charge, if not directly, indirectly through higher long distance rates.

³ Notice, para. 15.

⁴ Federal Communications Commission, Common Carrier Bureau, Industry Analysis Division, Local Telephone Competition: Status as of June 30, 2001, Table 1 (Feb. 2002).

end-user's LEC.”⁵ Consequently, PIC changes are executed predominately by an ILEC. As the Commission acknowledged, when a market is not competitive, aside from non-existent, the Commission cannot rely on market forces to ensure the assessment of a reasonable fee for this service.⁶

Specifically, if the ILEC charges an exorbitant rate to change a PIC, the customer is forced to either pay the unreasonable rate or forgo switching his long distance service provider. Because the ILEC only derives revenue when it charges fees above associated costs for performing the switch, with no competition for this service, the ILEC has no incentive to charge a reasonable rate. Moreover, even when the customer switches to the ILEC's affiliate long distance services, the ILEC is not harmed by an excessive rate. The ILEC could readily reimburse the customer to entice them to switch to the long distance affiliate, and only incur the actual cost of the switch, thereby obtaining a significant competitive advantage in the long distance market. This is not the case for competitors whose potential customer may opt not to switch because of the high rate.

Indeed, it is in the public interest for this charge to be a regulated rate. Consumers' ability to incur minimal costs to switch their PIC is a necessary component to maintaining competition in the long distance market. Consumer willingness to change providers encourages carriers to compete via lower rates, to provide innovative service offerings, and to improve service quality. Carriers are motivated to attract new customers and to prevent the loss of current customers. Consequently, as the Commission

⁵ Notice, para. 15.

⁶ *Id.*

acknowledged in its *Notice*, the fee consumers must pay to switch their providers has a significant impact on the vibrancy of choice in the long distance market.⁷

II. SYSTEM COSTS ASSOCIATED WITH SWITCHING PROVIDERS SHOULD BE THE ONLY RECOVERABLE COSTS.

When WorldCom (or subsidiaries such as MCI) takes an order from a customer who wants to switch her preferred interexchange service to WorldCom, it is WorldCom's representative who interacts with the customer and keys in the order entry. WorldCom then sends the order to the ILEC through an electronic system. Once the order reaches the ILEC system, it triggers an automated process that updates the ILEC subscription, billing systems and the switch, to reflect the change in the customer's preferred provider. The cost of this automated process is the only cost the ILEC should be allowed to recover through its PIC change charge. There may be limited exceptions, such as switches for business customers with complex line types, where manual handling may be required. Although a slightly higher charge in those cases may be justified - - \$5.00 per PIC clearly is not.

WorldCom expended significant resources developing and implementing systems to process its order with the ILECs through cost effective and efficient automated mechanisms. WorldCom and its customers should reap the benefits of these improvements rather than be forced to pay as if the process remained a manual one. Importantly, ILECs should not be permitted to derive substantial profits from a monopoly function.

⁷ *Id.*, para. 8, n. 27.

Further, ILECs should not be permitted to include the costs associated with other services, such as their PIC freeze offerings (a service the majority of end-users have opted not to use), in the PIC change charge. As WorldCom previously stated, consumers should not be forced to bear the additional costs for services they have neither requested nor received.⁸ The inclusion of PIC freeze costs in the carrier change charge is even more unjust since those that do *not* subscribe to the freeze service are more apt to be the ones to change their service and incur the fee.

ILEC claims that PIC dispute functions increase their costs to process PIC changes are disingenuous. *All carriers*, not just the ILEC, receive allegations of unauthorized conversions and are required to inform the consumer of his right to file a complaint against the alleged unauthorized carrier.⁹ At the customer's request the ILEC switches the customer back to the alleged authorized carrier - - a cost for which the ILEC is reimbursed by assessing a fee to the alleged unauthorized carrier under current ILEC tariffs. The ILEC should not incur any additional costs because there is no additional action required by the ILEC.¹⁰ Nevertheless, consumers should not have to pay a higher fee when changing providers in order to cover cost associated with purported unauthorized conversions.

⁸ See WorldCom's Reply Comments, CCB/CPD No. 01-12; and RM-10131, p. 7 (Jul. 2, 2001); See also, *In the Matter of Capital Network Systems, Inc.* Memorandum Opinion and Order, DA 91-1150, para. 4 (1991) *afm.*, Capital Network Systems, Inc. v. FCC, et al., No. 92-1640 (DC Cir. 1994)[An "...attempt to charge a party for service which that party neither orders nor receives would constitute an unreasonable practice."]; See also, *In the Matter of Truth-in Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, para. 37 (1999)["[P]roviding clear communication and disclosure of the nature of the service for which payment is expected is fundamental to a carrier's obligation of reasonable charges and practices."]

⁹ 47 CFR § 64.1150(b).

¹⁰ See *In the Matter of Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers*, Third Report and Order and Second Order on Reconsideration, CC Docket No. 94-129, para. 86 (2000).

Moreover, as evidence submitted by WorldCom in this docket demonstrates, some of these purported allegations occurred during ILEC initiated contact with consumers. In fact, the evidence also indicates that the majority were purely “winbacks.”¹¹ Consumers changing carriers should not be forced to pay ILEC marketing costs. Additionally, an above cost fee for PIC changes encourages ILECs to miscode winbacks as alleged unauthorized conversions. It allows them to obtain a profit on the winback without having to charge the end-user - - by assessing a fee against the purported unauthorized carrier.

Additionally, it is illogical to impose a higher charge upon customers who request “excessive” PIC changes. First, it is unclear how the Commission could define an “excessive” exercise of choice while at the same time encouraging competitive choice. Second, there is no rational reason to deter a consumer from repeatedly exercising his choice to change providers when either he, or the carrier of choice, is willing to pay the costs associated with that switch. Third, there is no evidence in this docket to suggest that an increased volume of switching will increase per transaction cost. In fact it is likely to lower the per transaction cost. Finally, consumers historically have not paid PIC change fees. They have been paid by the carrier to which they were switching. No evidence, other than ILEC supposition, indicates that this lead to “excessive” switching by consumers.

Similarly, the ILEC does not incur double the cost of a single PIC change when a customer switches both interLATA and intraLATA toll at the same time. It is simply a

¹¹ See WorldCom Ex Parte Notice, CC Docket No. 94-129; CCB/CPD No. 01-12; and RM No. 10131, Sept. 6, 2001.

matter of processing one more field entered on the service order. Thus, the ILEC should not be able to recover the full charge for both changes.

III. THE COMMISSION SHOULD SET THE ALLOWABLE RATE BASED ON THE COSTS OF THE MOST TECHNOLOGICALLY EFFICIENT SYSTEM.

As the Commission has stated, carriers are expected “to fulfill subscriber requests [to switch providers] as quickly as possible, using the most technologically efficient means available to implement changes to subscribers’ telecommunications services.”¹² Noncompliance with this standard has been deemed an unreasonable practice.¹³ Therefore the Commission should evaluate the ILEC processes and purported associated costs, and determine a PIC change rate based on the cost of using the most technologically efficient system. ILECs should not be allowed to charge a fee higher than this determined amount.

Permitting ILECs to charge their actual costs does not ensure the use of the most technologically efficient mechanism by the ILEC. History has demonstrated that some ILECs pass on the costs of their inefficient systems to consumers and the long distance industry. BOCs, if permitted to assess high PIC change fees, will gain an unfair advantage upon entering the long distance market.

Once it has set a reasonable cost-based rate for PIC changes, the Commission should establish a periodic review process to accommodate technological changes that may decrease the cost.

¹² *In the Matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 94-129, FCC 98-334, para. 105 (1998).

CONCLUSION

The Commission should act expeditiously in ruling that the ILECs' PIC change charge be a rate that reflects the cost of the most technologically efficient process.

Respectfully Submitted,

WORLDCOM, Inc.

____/s/_____

Karen Reidy
Lisa Smith
1133 19th Street, NW
Washington, DC 20036
(202) 736-6489

Its Attorneys

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¹³*See Id.*